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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,955	04/19/2001	Noriyasu Suzuki	FUS 18.594	1242
26304	7590	07/30/2004	EXAMINER	
KATTEN MUCHIN ZAVIS ROSENMAN 575 MADISON AVENUE NEW YORK, NY 10022-2585			ZHENG, EVA Y	
			ART UNIT	PAPER NUMBER
			2634	5

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/837,955	SUZUKI ET AL.
	<b>Examiner</b> Eva Yi Zheng	<b>Art Unit</b> 2634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 April 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Wallstedt et al. (US 6,330,450 B1).

a) Regarding claims 1, 5, 9, 13, 14, and 17-24, Wallstedt et al. disclose a data transmission apparatus for receiving data transmitted via a line under a noise environment in which two time spaces having different noise levels appear alternatively, said data transmission apparatus comprising:

a measuring unit (410 in Fig. 4) which measures a state of the line;  
a transmission rate determining unit (486 in Fig. 4) which determines a transmission rate based on the measured result of the measuring unit at an interval of the intervals that the noise level is low, whereas determining the transmission rate as zero at an interval that the noise level is high (Fig. 3; Col 3, L 43-56);

a posting unit (488 in Fig. 4) which posts the transmission rate determined by the transmission rate determining unit to a transmission side; and

a receiving unit (414 in Fig. 4) which receives data transmitted via the line at the transmission rate determined by the transmission rate determining unit.

b) Regarding claims 2, 6, 11 and 15, Wallstedt et al. disclose the data transmission apparatus, wherein when a predetermined condition is satisfied, the transmission rate

determining unit determines the transmission rate based on the measured result of the measuring unit also at the interval that the noise level is high (306 in Fig. 3; Col 3, L 43-56).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 7, 8, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallstedt et al. (US 6,330,450 B1).

a) Regarding claims 3, 7, 12 and 16, Wallstedt et al. disclose all of the subject above except for specifically teaching of the condition relates to a state of a power supply of the data transmission apparatus or a state which is changed in response to the state of the power supply.

However, as shown in Fig. 3, Wallstedt et al. disclose operation diagram of the signal transmission (Col 3, L 43-56). Block 302 has shown signal strength measurement on frequency, which is in direct relation with power. This is well known. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to recognize that state of power supply is equivalent as or can be substitute to state of frequency based on their mathematical relations.

b) Regarding claims 4 and 8, Wallstedt et al. disclose all of the subject above except for specifically teaching of the power supply is a battery.

However, it is well known that battery is the most common type of power supply.

As shown in Fig. 1, both mobile and base station should be powered by battery.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to recognize that power supply used in Wallstedt et al.'s communication system is battery.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eva Yi Zheng whose telephone number is 703-305-8699. The examiner can normally be reached on 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on 703-305-4714. The fax phone number for the organization where this application or proceeding is assigned is 703-879-9306.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Eva Yi Zheng  
Examiner  
Art Unit 2634

July 16, 2004

*Shuyang Liu*

SHUYANG LIU  
PRIMARY EXAMINER